



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1044

Appeal P-9500329

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request for access to all records, including police notes, witness statements and photographs regarding a motor vehicle accident in which the requester's husband was killed. The request was filed on behalf of the requester by her counsel.

The Ministry located records responsive to the request and denied access to them on the basis of the following exemptions found in the Act:

- law enforcement - sections 14(1)(a) and (b)
- right to fair trial - section 14(1)(f)
- invasion of privacy - section 21(1).

The requester (now the appellant) appealed this decision. During mediation, the appellant's counsel indicated that he was not interested in any portions of the records which do not pertain to the accident. Portions of the police officers' notes contain information regarding other events which occurred during these officers' tours of duty. This information is found on **pages 52, 73 and 74 and portions of pages 34, 35, 39, 40, 42, 44, 50, 51, 53, 56, 62, 69 - 72, 75 and 80**. I have highlighted the non-responsive portions of the police officers' notes in pink on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order. These non-responsive portions of the records are not at issue in this appeal and should not be disclosed.

A Notice of Inquiry was provided to the Ministry and the appellant. The records appear to contain the personal information of the appellant. Accordingly, in the Notice of Inquiry, the Commissioner's office raised the possible application of sections 49(a) (discretion to refuse requester's own information) and (b) (invasion of privacy). In response to the Notice of Inquiry, representations were received from the Ministry only.

The records at issue consist of the following:

- confidential instructions for crown counsel and synopsis (pages 1 - 3)
- witness statements (pages 4 - 15)
- Information (containing charges) (pages 16 - 17)
- motor vehicle accident reports (pages 18 - 19, 21 - 25, 26, 27 and 28 - 29)
- documentation from the Ministry of Transportation (pages 20, 30 and 31)
- responsive portions of police officers' notes (pages 32 - 80).

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

The Ministry submits that all of the records contain the personal information of individuals other than the appellant. In particular, the records contain statements of witnesses and police officers involved in the investigation of the accident, which reflect their views and opinions concerning the event. The records also contain the addresses and telephone numbers of individuals other than the appellant.

I agree that some of the information contained in the records (either in whole or in part) pertains to the individuals involved in the accident and/or investigation, and that this constitutes their personal information. This information is found on pages 1 - 22, 31, 36 - 42, 44 - 49, 53 - 55, 57, 62, 63 and 76. Moreover, some of these records also contain the personal information of the appellant. This information is found on pages 1 - 5, 18 - 19, 34 - 42, 44 - 50, 53 - 56, 57 - 60 and 62 - 69.

I am of the view, however, that much of the information contained in the records pertains to the police investigation of a motor vehicle accident, which includes technical details of the scene and the function of the police in investigating the accident. I find that this information does not constitute the personal information of the individuals involved in the accident. Moreover, since any information in the records provided by a particular police officer was provided as part of his employment responsibilities, this information does not constitute the personal information of the police officer.

Under section 49(b) of the Act, where a record contains the personal information of **both the appellant and other individuals**, and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the Ministry has the discretion to deny the requester access to that information. For these records (pages 1 - 5, 18 - 19, 34 - 42, 44 - 50, 53 - 56, 57 - 60 and 62 - 69), I will consider whether disclosure would be an unjustified invasion of the personal privacy of other individuals under section 49(b).

Where, however, a record **only contains the personal information of other individuals**, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits the Ministry from releasing this information. For these records (pages 6 - 17, 20 - 22, 31 and 76), I will consider whether disclosure would be an unjustified invasion of personal privacy under section 21(1).

Under both sections 21(1) and 49(b), sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Ministry indicates in its representations that as a result of the accident and subsequent investigation, charges were laid against the driver of one of the vehicles involved in the accident under the Highway Traffic Act (the HTA). The Ministry submits that the personal information in the records was compiled and is identifiable as part of an Ontario Provincial Police (OPP) investigation into a possible violation of law (section 21(3)(b)), that being a violation of the HTA.

I have reviewed the records and portions of records at issue which I have found to contain personal information and have made the following findings:

1. Pages 4 and 5 comprise the statement provided by the appellant to the OPP following the accident. Similarly, much of the information in the records about the deceased and family members and friends of the appellant would have been provided to the OPP by the appellant. In the circumstances of this appeal, I find that there will be no unjustified invasion of the personal privacy of any other individual if this information is disclosed to the appellant.
2. The remaining personal information contained in these records was compiled by the OPP during their investigation of a motor vehicle accident which was directed towards determining whether there had been a possible violation of the HTA. Accordingly, I am of the view that the presumption contained in section 21(3)(b) of the Act applies to this information.
3. I have highlighted in yellow on the copies of the records to be provided to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order, the portions of the records which I find contain personal information of individuals other than the appellant, and to which the presumption in section 21(3)(b) applies.
4. I have considered the possible application of section 21(4) of the Act and find that none of the personal information at issue falls within the scope of this section. In addition, the appellant has not raised the application of section 23 of the Act.
5. Based on the application of section 21(3)(b), I find that the disclosure of the information to which this presumption applies would be an unjustified invasion of the personal privacy of individuals other than the appellant. For this reason, the information in **pages 1 - 3, 45 - 47 and 52**, and the **highlighted portions of the records comprising pages 18 - 19, 21, 36 - 42, 44, 48, 49, 57 and 63** is exempt under section 49(b), and the information in the records comprising **pages 6 - 17, 20, and 31** and the **highlighted portion of page 76** is exempt under section 21(1).

LAW ENFORCEMENT/RIGHT TO FAIR TRIAL

The Ministry claims that sections 14(1)(a), (b) and (f) of the Act apply to exempt all of the information contained in the records at issue from disclosure. I have found that pages 1 - 3, 6 - 17, 20, 45 - 47 and 52, and portions of the records comprising pages 18 - 19, 31, 34 - 42, 44, 48 - 50, 53 - 56, 57 - 60, 62 - 69 and 76 are exempt under section 21(1). Accordingly, I will restrict my discussion of sections 14(1)(a), (b) and (f) to the remaining information.

The Ministry's arguments under sections 14(1)(a), (b) and (f) all relate to concerns about the ability of an individual charged under the HTA to have a fair and impartial trial. Because the Ministry's submissions are simultaneously directed at all three of these sections, I will consider whether its representations have collectively established their application.

Sections 14(1)(a), (b) and (f) of the Act state:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (f) deprive a person of the right to a fair trial or impartial adjudication.

In order for a record to qualify for exemption under sections 14(1)(a) or (b), the matter to which the record relates must first satisfy the definition of "law enforcement" found in section 2(1) of the Act. The records relate to the investigation of a motor vehicle accident and the possible violation of the HTA, which qualifies as a law enforcement matter within the meaning of section 2(1) of the Act.

The Ministry states that as a result of the OPP investigation into the motor vehicle accident, charges were laid under the HTA. Further, this matter was still before the courts as of October 27, 1995. The Ministry indicates that the information contained in the records was used by the OPP to lay the charges, and this information forms the Crown Brief being used by Crown Counsel in the continuing prosecution of these charges.

The Ministry submits that the investigation and prosecution of the charges are law enforcement matters. Further, disclosure of evidence in court proceedings could potentially prejudice the ability to conduct a fair and impartial trial. In this regard, the Ministry submits that "[t]he disclosure of these records could result in a publication of the anticipated evidence of subpoenaed witnesses to be used in a trial, which would interfere with the law enforcement proceedings."

Finally, the Ministry argues that, following the reasoning in Order P-225, records which were prepared for use in a prosecution under the HTA would qualify for exemption under these sections.

The Ministry has provided no evidence that the records at issue in this appeal were prepared for use in a prosecution. Although the records, or information in them, may ultimately be of use in the prosecution, the purpose of their creation was to document the OPP investigation of a motor vehicle

accident and to gather information regarding the event in furtherance of the OPP's policing role.

In its representations, the Ministry appears to be suggesting that simply because a matter is before the courts, disclosure of any information gathered during an investigation into the matter would logically lead to the harms contemplated in section 14(1)(a), (b) or (f). The Ministry has provided no evidence to support this argument, however, and I am not persuaded that the mere disclosure of any information gathered as part of a police investigation, during a trial, would necessarily prejudice an individual's right to a fair trial.

In my view, the Ministry has failed to provide sufficient information and reasoning to support a conclusion that disclosure of the remaining information in the records could reasonably be expected to result in any interference with a law enforcement matter, or to deprive a person of the right to a fair trial or adjudication in the circumstances of this appeal.

Accordingly, I find that the Ministry has failed to meet the burden of proof imposed on it by section 53 of the Act, and I am not satisfied that a reasonable expectation of the harm contemplated in sections 14(1)(a), (b) or (f) has been established. Therefore, I find that these exemptions do not apply to the remaining information at issue.

Because of the findings I have made, it is not necessary for me to consider the possible application of section 49(a).

ORDER:

1. I uphold the Ministry's decision to withhold the information contained in pages 1 - 3, 6 - 17, 20, 31, 45 - 47 and 52, and the portions of the records comprising pages 18 - 19, 21, 36 - 42, 44, 48, 49, 57, 63 and 76 which are highlighted in yellow on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry **not** to disclose the portions of information which is found on pages 52, 73 and 74 and portions of pages 34, 35, 39, 40, 42, 44, 50, 51, 53, 56, 62, 69 - 72, 75 and 80 which are highlighted in pink on the copies of the records which are being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I order the Ministry to disclose the remaining records (pages 4, 5, 22 - 29, 30, 32, 33, 43, 54, 55, 58 - 61, 64 - 68 and 77 - 79) and the non-highlighted portions of the records (comprising pages

18, 19, 21, 34 - 42, 44, 48 - 51, 53, 56, 57, 62, 63, 69 - 72, 75, 76 and 80) to the appellant within fifteen (15) days after the date of this order.

4. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 3.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 8, 1995